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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 19, 1993

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Via Hand Delivery

Donna R. Searcy, Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: **Rulemaking Comments**
MM Docket No. 93-24

Dear Ms. Searcy:

Transmitted herewith, on behalf of RuralVision South, Inc. and RuralVision Central, Inc., please find the original and five (5) copies of their Comments in the above-referenced rulemaking proceeding.

If you have any questions or require additional information concerning this matter, kindly contact the undersigned.

Sincerely,

Frederick M. Joyce

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enc.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:)
)
Amendment of Part 74 of the)
Commission's Rules with)
regard to the Instructional)
Television Fixed Service.)

93-24 ✓
MM Docket No. ~~93-224~~

To: The Commission

COMMENTS OF RURALVISION SOUTH, INC.
AND RURALVISION CENTRAL, INC.

Frederick M. Joyce
Christine McLaughlin
Their Attorneys

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April 19, 1993

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SUMMARY

RuralVision, a wireless cable lessee of ITFS licensees and applicants, supports the FCC's efforts to expedite the processing of ITFS applications through the use of a filing window procedure. The current A/B cut-off procedures have become inadequate to handle the increased volume of ITFS applications; ITFS applications often remain pending for long periods before appearing on a cut-off list. These processing delays hinder the institution of new ITFS and wireless cable services.

The approach proposed in the FCC's Notice of Proposed Rulemaking, to model the ITFS window procedures after those used for LPTV applications, appears to be the most appropriate approach for ITFS applications. By periodically opening filing windows for all available channels throughout the country, rather than opening windows by market, the FCC will allow educational institutions the necessary flexibility to determine their needs for ITFS services or for modifications to those services at regular intervals.

Although the FCC's goals and proposals in this proceeding are laudable, the freeze imposed by the Notice of Proposed Rulemaking is causing unnecessary costs and delays to ITFS applicants and their wireless cable lessees. The freeze should promptly be lifted, at least for those new and major change applications which were pending prior to the imposition of the freeze.

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To: The Commission

**COMMENTS OF RURALVISION SOUTH, INC.
AND RURALVISION CENTRAL, INC.**

RuralVision South, Inc. and RuralVision Central, Inc.
("RuralVision"), by their attorneys and pursuant to Sections
1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415,
1.419, hereby submit these Comments in the above-captioned
proceeding, in response to the Commission's Notice of Proposed
Rulemaking ("Notice"), released February 25, 1993.

I. Statement of Interest.

RuralVision has obtained, or applied to obtain, FCC license
authorizations for Multipoint Distribution Service ("MDS")
stations in many rural communities in Ohio, Kansas, Missouri,
Oklahoma, Texas, New Mexico and other locations throughout the
nation. RuralVision also constructs, manages and operates
Instructional Television Fixed Service ("ITFS") facilities for
eligible applicants, pursuant to FCC-approved excess capacity
leases. RuralVision-owned or managed wireless cable systems have
been constructed and are in service today.

RuralVision has thus far committed millions of dollars to
the construction and operation of multi-channel wireless cable
systems. RuralVision will be bringing wireless cable television

services to communities that have no cable service or where cable service is extremely limited. In short, RuralVision, one of the largest wireless cable entities in the Nation, is committed to the development of competitive wireless cable TV services.

The development of wireless cable services has, to a great extent, been made possible by the ability of wireless cable operators to lease excess capacity airtime from ITFS licensees. The ITFS frequencies provide the majority of available channels for wireless cable services; without access to ITFS channels, the provision of wireless cable in many areas would not be technically or commercially possible. As the operator of wireless cable systems in rural areas throughout the United States, RuralVision is well aware that those systems would likely not be viable without the channel capacity leased from ITFS licensees. The converse is true as well; many schools, especially in the rural areas in which RuralVision operates, would not be able to obtain the benefits of ITFS services for their students without the technical, operational and financial assistance of a wireless cable lessee.

In view of the mutual dependence involved in the lessor-lessee relationship, RuralVision has a keen interest in rule changes which may impact its lessors' applications and operations. Consequently, it is submitting these Comments.

II. RuralVision Supports the Use of Filing Windows.

As a general matter, RuralVision applauds the FCC's efforts to simplify and expedite the ITFS application process through the

use of a filing window procedure. As the Commission observed in the Notice, the current A/B cut-off procedure is no longer adequate to expeditiously process the large volume of ITFS filings. See Notice at ¶ 5.

Many ITFS applications remain pending at the Commission for over a year before appearing on an A cut-off notice; after that long wait, many of those applicants find themselves in mutually-exclusive situations, which naturally entail additional delays. Although RuralVision recognizes the statutory right of other entities to file competing proposals, it is unfair for applicant educational institutions to be left "in limbo" for so many months before learning whether or not their applications have been contested. In many instances, school districts have planned their annual budgets and upcoming school curricula around anticipated ITFS services, only to have those plans upset by unexpected application processing delays.

The Commission itself has noted the inequity of similar delays in the context of low power television ("LPTV") services, and observed that filing windows provide a useful solution:

Filing windows should ... eliminate the deliberate creation of mutually exclusive situations by over-filing on applications as they appear on cut-off lists. Over-filing has been a source of frustration to applicants who have diligently prepared an application and waited years only to have numerous competing applications filed on the cut-off date.

Low Power Television and Television Translator Service, 57 RR 2d 234, 236 (1984) ("LPTV Order").

A filing window system should alleviate the over-filing

problem by establishing a date certain by which all proposals for a given market must be filed. Additionally, by letting applicants know shortly after their applications are filed whether or not they face competing proposals, the applicants will be able to more accurately estimate their prospects for obtaining ITFS programming services. Additionally, shorter and more routinized application processing times will aid wireless cable lessees in formulating their marketing plans.

III. Preferred Processing Methodology.

The Notice indicates that the ITFS filing window procedures will be similar to the procedures adopted in the LPTV Order. See Notice at ¶ 6. Pursuant to those procedures, the Commission periodically announces a filing window by Public Notice, and specifies the dates upon which the window will open and close. LPTV Order, 57 RR 2d at 237. Those filing windows are generally open for all available channels throughout the country. Id.

RuralVision supports this proposal, and believes that the LPTV procedure is best suited for ITFS filings. Other filing window procedures, which open specific "markets" for filing, do not seem appropriate for this educational service.

First of all, there would be many difficulties in determining to what "markets" various neighboring schools or school districts would belong. ITFS service areas, based upon the location of specified educational receive sites, are often irregular in size, and routinely grow by minor modification as additional schools ask to become receive sites. A prospective

ITFS applicant may not intend to provide service to a given community, and thus not consider itself part of that "market;" however, that applicant may later find that it is mutually exclusive with a proposal from the relevant "market" based upon the location of each proposal's receive sites.

Additionally, filing windows based upon a "market" definition would raise difficult questions of who determines which markets should be "open." This issue does not raise serious concerns if the procedure mirrors that used for FM applications, in which an interested applicant may request that a particular market be assigned a window date. However, a window procedure like that used for cellular applications, where windows are opened in order of market size, would ill-serve the objectives of ITFS. The markets given the earliest filing window dates would not necessarily be those which have the greatest need for either instructional programming for local students or for competing video entertainment services for the general public. Indeed, if the proposed window procedure were to follow the cellular model, with the smallest markets being the last to receive window dates, the rural areas which have the most compelling needs for cost-efficient instructional materials, and which are underserved by other multichannel video services, would remain without service for a long time to come.

The LPTV approach of periodic nation-wide filing windows avoids these difficulties by allowing applicants flexibility in determining the areas they propose to serve, and by permitting

ITFS eligible institutions, rather than the Commission, to determine whether their particular areas have a demand for ITFS at any given time.

As to the amount of advance notice of filing window openings, the 60-day minimum proposed in the Notice should be sufficient. See Notice at ¶ 6. That is the amount of time ITFS applicants have under current procedures to prepare applications in response to an A cut-off list. The large number of applications which have been filed in response to A cut-offs indicates that a 60-day period provides more than sufficient time to prepare an ITFS application. Cf. Notice at ¶ 5. Additionally, as the Notice observes, prospective applicants can begin preparation of their applications in advance of a window notice. See Notice at ¶ 7. Hence, there should be no need to provide more than 60 days advance notice of a filing window.

IV. The Freeze Should Be Lifted.

Though RuralVision supports the FCC's proposal to revise ITFS filing procedures, it respectfully submits that the freeze on ITFS applications imposed by the Notice creates substantial practical difficulties for ITFS applicants and licensees, and their wireless cable lessors. RuralVision therefore requests that the FCC promptly lift the freeze, at least with regard to applications tendered for filing prior to the adoption of the Notice.

As previously stated, ITFS applications often remain pending at the Commission for many months, sometimes more than a year,

before being placed on a cut-off notice. For those long-standing applicants who have not yet been placed on a cut-off notice, and must await the adoption of the new Rules, the current freeze serves only to compound the delays they face in instituting ITFS services. For example, several of RuralVision's lessors filed

adverse impact on its ability to build and expand ITFS facilities for the ITFS lessors.

The costs for labor and installation of five systems at one time are not materially greater than the costs for labor and installation of one system; such economies are lost when those costs must be incurred at several different times. Wireless cable companies generally pay for the construction of their ITFS lessors' stations, and they will bear the additional costs attendant to constructing a system piecemeal.

The freeze is also having an adverse impact on necessary modifications to existing wireless cable systems. For obvious reasons of economy and interference-avoidance, most ITFS channel systems are co-located with the commercial wireless cable channels. When, due to loss of site availability or to improve signal coverage, it becomes necessary to relocate wireless cable facilities, obviously, all of the co-located channels should be moved at the same time. With a freeze in place on ITFS modifications, the FCC may be placing commercial channel operators in the untenable position of having to modify less than all of the co-located facilities, thereby causing unnecessary interference problems and escalating the costs of the modifications.

For example, although each ITFS station has its own transmitter, all co-located facilities will use a common transmitting antenna and related equipment. If only some of the co-located facilities are relocated, duplicative antennas and

equipment must be purchased. Additionally, receive antennas must be pointed at the ITFS transmitter. When only some of the co-located channels are relocated, it is necessary to install a second receive antenna at each educational receive site (or subscriber residence) to allow all the channels to be received clearly. Moreover, the labor and installation costs to relocate stations in a single system is approximately the same, per move: if the approximate cost to move one of the co-located stations is \$5,000, the approximate cost of relocating all those stations, at one time, is \$5,000. If those stations must be relocated at separate times, the costs may double, or triple, depending on how many separate moves must be made.

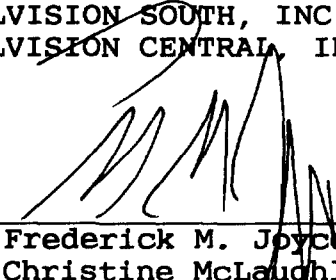
In short, the freeze, by precluding ITFS operators from modifying all co-located stations at the same time, has caused inefficient operations, degradation of services, and additional costs to ITFS licensees and their wireless cable lessees. The public interest warrants a lifting of the freeze to eliminate these problems.

Conclusion

The FCC's proposed changes to the ITFS filing procedures promise increased efficiency in application processing, with the result of expediting ITFS and wireless cable services to the public. RuralVision commends the FCC on its efforts in this regard, and supports the institution of LPTV-like filing window procedures for ITFS. RuralVision respectfully submits, however, that the freeze on new and major change applications is hindering the prompt initiation and expansion of ITFS and wireless cable services; it imposes unnecessary burdens on service providers, and it should be promptly lifted.

Respectfully submitted,

RURALVISION SOUTH, INC.
RURALVISION CENTRAL, INC.

By 
Frederick M. Joyce
Christine McLaughlin
Their Attorneys

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April 19, 1993

CERTIFICATE OF SERVICE

I, Dennean Myers-Ferrell, a secretary with the law firm of Joyce & Jacobs, do hereby certify that on this 19th day of April, 1993, copies of the foregoing Comments of RuralVision South, Inc. and RuralVision Central, Inc. were served, via hand delivery, upon the following:

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Washington, DC 20554

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Washington, DC 20554

Comm'r. Andrew C. Barrett
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